



Entered on Docket
October 23, 2006

Hon. Linda B. Riegle
United States Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,
Debtor.

Case No. BK-S-06-10725 LBR
Case No. BK-S-06-10726 LBR
Case No. BK-S-06-10727 LBR
Case No. BK-S-06-10728 LBR
Case No. BK-S-06-10729 LBR

In re:
USA CAPITAL REALTY ADVISORS, LLC,
Debtor.

Chapter 11

In re:
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,
Debtor.

Jointly Administered Under
Case No. BK-S-06-10725 LBR

In re:
USA CAPITAL FIRST TRUST DEED FUND, LLC,
Debtor.

In re:
USA SECURITIES, LLC,
Debtor.

Affects:
☒ All Debtors
☐ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC

**ORDER GRANTING DEBTORS'
MOTION FOR AN ORDER
AUTHORIZING RETENTION OF
PROFESSIONALS UTILIZED BY
DEBTORS IN THE ORDINARY
COURSE OF BUSINESS
(AFFECTS ALL DEBTORS)**

Date: September 28, 2006
Time: 9:30 a.m.

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Before the Court is the Debtors' Motion for an Order Pursuant to 11 U.S.C. §§ 105(a), 327(a) and 331 Authorizing Retention of Professionals Utilized by Debtors in the Ordinary Course of Business (the "Motion") filed August 29, 2006 (Docket No. 1202) by USA Commercial Mortgage Company, USA Securities, LLC, USA Capital Realty Advisors, LLC, USA Capital Diversified Trust Deed Fund, LLC, and USA Capital First Trust Deed Fund, LLC (collectively, the "Debtors"). The Motion, as modified and clarified in the Supplement to the Motion (the "Supplement") (Docket No. 1344) filed by the Debtors on August 21, 2006, sought an Order of the Court allowing Debtors to retain and compensate Ordinary Course Professionals,¹ pursuant to sections 105(a) and 327 of the Bankruptcy Code, without the necessity of a separate formal retention applications. The Official Committee for the Unsecured Creditors of USA Commercial Mortgage Company filed an objection to the Motion on August 19, 2006 (Docket No. 1320). At the hearing on the Motion held September 28, 2006, appearances of counsel were noted on the record and arguments were made concerning the Motion.

Having reviewed and considered the Motion, the objection to the Motion, the Supplement, arguments made at the September 28, 2006 hearing, and other facts of record in these jointly administered cases, THE COURT HEREBY FINDS that notice of the Motion was adequate and proper and that good cause exists for granting the relief requested in the Motion, and THE COURT HEREBY ORDERS AS FOLLOWS:

The Motion is GRANTED to the extent set forth below:

1. Debtors may retain the services of Ordinary Course Professionals without filing a separate retention application and without obtaining approval by this Court for each Ordinary Course Professional, subject to the following limitations:

a. Debtors shall consult in good faith with the Official Committee of Unsecured Creditors for USA Commercial Mortgage Company ("Unsecured Creditors' Committee") with respect to Debtors' selection of Ordinary Course Professionals, but the Debtors' ability to select and retain Ordinary Course

¹ Capitalized terms not defined herein shall have the meanings set forth in the Motion.

Professionals is not conditioned on obtaining the approval of the Unsecured Creditors' Committee.

b. All Ordinary Course Professionals retained by the Debtors shall file with the Court a verified statement pursuant to Fed. R. Bankr. P. 2014 (a "Verified Statement") within twenty (20) days after the professional's post-petition engagement by the Debtors, and each Verified Statement shall be served upon the United States Trustee and counsel for each of the four official committees serving in the Debtors' bankruptcy cases (collectively, the "Interested Parties"). The Interested Parties shall have twenty (20) days after the receipt of each Verified Statement (the "Objection Deadline") to file an objection to the retention of such Ordinary Course Professional. The objecting party shall serve any objections upon the Ordinary Course Professional, the Debtors, and the Interested Parties on or before the Objection Deadline. Any such objections shall be scheduled for hearing before the Court at the next regularly scheduled omnibus presentment date or a date otherwise agreeable to the objecting party, the Ordinary Course Professional, the Debtors, and the United States Trustee. If no objection is received within twenty (20) days after the filing of an Ordinary Course Professional's Verified Statement, the Debtors shall be deemed authorized to retain such professional as a final matter.

2. Debtors may compensate Ordinary Course Professionals for post-petition services rendered and expenses incurred without the necessity of additional Court approval, subject to the following conditions:

a. Debtors are permitted to pay, without formal application to the Court, 100% of the post-petition interim fees and expenses of an Ordinary Course Professional upon the submission to Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Petition Date, but only to the extent the aggregate post-petition payments to such Ordinary Course Professional do not exceed \$50,000.

b. To the extent that an Ordinary Course Professional's total fees and expenses

sought exceed \$50,000.00, any payments in excess of \$50,000 to such professional shall be subject to approval by the Interested Parties and, to the extent of an objection by an Interested Party, shall be subject to approval by the Court pursuant to 11 U.S.C. § 331. Debtors shall, on or before the 30th day of the month following the month for which compensation is sought (the “Monthly Statement Date”), submit to the Interested Parties a monthly statement of the compensation and expenses sought in excess of \$50,000. The Interested Parties shall have twenty (20) days to object to the fees and expenses requested by such Ordinary Course Professional. If any Interested Party objects, the Ordinary Course Professionals will be required to submit a formal application to the Court for the additional compensation.

c. At the conclusion of the Debtors’ chapter 11 cases, Debtors shall file an Ordinary Course Fee Application setting forth all fees and expenses requested by and paid to Ordinary Course Professionals retained, and such fees and expenses shall be subject to review and final approval by the Court pursuant to 11 U.S.C. § 330.

3. Each Ordinary Course Professional retained by the Debtors shall provide a monthly billing statement to the Debtors, and Debtors shall compile and circulate to the Interested Parties a summary of the compensation requested by and paid to each Ordinary Course Professional in the prior month.

4. The fees and costs of Ordinary Course Professionals who are Foreclosure Attorneys (as defined in the Motion) shall be allocated by the Debtors to the particular loan(s) for which each Foreclosure Attorney is engaged. The fees and costs of other Ordinary Course Professionals (“Litigation Attorneys,” “Ordinary Course Accountants,” and “Other

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1 Ordinary Course Professionals”) shall be allocated by the Debtors to the estate(s) of the
2 Debtor(s) benefited by the services of the Ordinary Course Professional in question.

3 Prepared and Submitted By:

Approved by:

OFFICE OF THE U.S. TRUSTEE

4
5 /s/ Lenard E. Schwartzer, Esq.
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14 Approved by:
15 **LEWIS AND ROCA, LLP**

Approved by:
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16 By: /s/ Susan M. Freeman, Esq.
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21 *Mortgage Company*

By: _____
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Holders of Executory Contract Rights of
USA Commercial Mortgage Company

20 Approved by:
21 **BECKLEY SINGLETON, CHTD. and**
22 **ORRICK, HERRINGTON & SUTCLIFFE LLP**

Approved by:
STUTMAN TREISTER & GLATT, P.C. and
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23 By: _____
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25 LYNN TRINKA-ERNCE, ESQ.
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27 *Counsel for the Official Committee of*
28 *Equity Security Holders of USA Capital*
Diversified Trust Deed Fund, LLC

By: /s/ Eve H. Karasik, Esq.
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First Trust Deed Fund, LLC

____ The court has waived the requirement of approval under LR 9021.

X I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and any trustee appointed in this case, and each has approved or disapproved the order, or failed to respond, as indicated below:

**Beckley Singleton/Orrick Herrington
Gordon & Silver, Ltd.**

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